

Attachment G

Planning Commission Meeting Minutes from
July 9, 2020

**NEWPORT BEACH PLANNING COMMISSION MINUTES
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE
THURSDAY, JULY 9, 2020
REGULAR MEETING – 6:30 P.M.**

I. **CALL TO ORDER** – The meeting was called to order at 6:33 p.m.

II. **PLEDGE OF ALLEGIANCE** – The pledge was led by Commissioner Klaustermeier

III. **ROLL CALL**

PRESENT: Chair Peter Koetting (remote), Vice Chair Erik Weigand, Secretary Lee Lowrey, Commissioner Curtis Ellmore, Commissioner Sarah Klaustermeier, Commissioner Lauren Kleiman, Commissioner Mark Rosene

ABSENT: None

Staff Present: Community Development Director Seimone Jurjis, Deputy Community Development Director Jim Campbell, Assistant City Attorney Yolanda Summerhill, City Traffic Engineer Tony Brine, Senior Planner Ben Zdeba, Assistant Planner Patrick Achis, Assistant Planner Melinda Whelan, Administrative Support Specialist Clarivel Rodriguez, Administrative Support Technician Amanda Lee

IV. **ELECTION OF OFFICERS**

ITEM NO. 1 ELECTION OF OFFICERS

Summary:

The Planning Commission’s adopted rules require the election of officers at its annual meeting, which occurs at the first meeting of July each year. Officers include the Chair, Vice Chair, and Secretary and they would serve for a one-year term.

Recommended Action:

1. Find this action not subject to the California Environmental Quality Act (“CEQA”) pursuant to 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3;
2. Nominate Planning Commission officers consisting of Chair, Vice Chair, and Secretary; and
3. Appoint the officers by majority approval of a motion either individually or as one motion for all positions.

Motion made by Commissioner Lowrey and seconded by Commissioner Kleiman to approve the nomination of Commissioner Weigand for Chair of the Planning Commission.

AYES: Koetting, Weigand, Lowrey, Ellmore, Klaustermeier, Kleiman, and Rosene

NOES:

ABSTAIN:

ABSENT:

Motion made by Chair Weigand and seconded by Commissioner Klaustermeier to approve the nominations of Commissioner Lowrey for Vice Chair and Commissioner Kleiman for Secretary of the Planning Commission.

AYES: Weigand, Lowrey, Ellmore, Klaustermeier, Kleiman, Koetting, and Rosene

NOES:

ABSTAIN:

ABSENT:

V. PUBLIC COMMENTS

Jim Mosher inquired whether an application for the second AT&T small cell installation recently approved by the Zoning Administrator will need to request a coastal development permit and whether Planning Commission meetings will continue in the current format after City Hall closes on July 13.

VI. REQUEST FOR CONTINUANCES

None

VII. CONSENT ITEMS

ITEM NO. 2 MINUTES OF JUNE 18, 2020
Recommended Action: Approve and file

Motion made by Vice Chair Lowrey and seconded by Secretary Kleiman to approve the minutes of the June 18, 2020, meeting with the revisions suggested by Mr. Mosher.

AYES: Weigand, Lowrey, Kleiman, Ellmore, Klaustermeier, Koetting
NOES:
ABSTAIN: Rosene
ABSENT:

VIII. PUBLIC HEARING ITEMS

ITEM NO. 3 HOAG DEVELOPMENT AGREEMENT ONE-YEAR EXTENSION (PA2020-065)
Site Location: 1 Hoag Drive

Summary:

The City and Hoag Memorial Hospital Presbyterian (“Hoag”) entered into a Development Agreement (“Agreement”) in 1994 to ensure the orderly development of the hospital over time. On July 23, 2019, the City Council approved a third amendment to extend the 25-year Term of the Agreement for an additional ten (10) years in exchange for certain community benefits provided by Hoag. Hoag has requested a fourth amendment to extend the Term of the Agreement for one (1) additional year in light of COVID-19-related impacts that have constrained their ability to plan for the future development of the hospital campus consistent with the amended Agreement. The Agreement grants Hoag the vested right to develop the hospital campus consistent with an extensive set of regulations and mitigation measures, all of which would remain unchanged by this proposed fourth amendment.

Recommended Action:

1. Conduct a public hearing;
2. Find all significant environmental concerns for the proposed project have been addressed in a previously certified Final Environmental Impact Report (EIR) and Supplemental EIR, and that the City of Newport Beach intends to use said document for the above noted project, and further that there are no additional reasonable alternative or mitigation measures that should be considered in conjunction with said project; and
3. Adopt Resolution No. PC2020-026 recommending City Council adoption of Development Agreement No. DA2020-003 amending Amended and Restated Development Agreement No. 5 to extend the Term of the Agreement by an additional one (1) year.

Commissioner Ellmore recused himself from the item as he serves on an advisory panel for Hoag Hospital.

Assistant Planner Patrick Achis reported Hoag Hospital requests a fourth amendment of the Development Agreement to extend the term by one year in light of COVID-related impacts constraining its ability to plan for development. Under the current Development Agreement, Hoag has the right to develop the hospital campus consistent with an extensive set of regulations and mitigation measures, none of which are affected by the proposed amendment. In 2019, the City Council approved an extension of the Development Agreement to

2029 in exchange for community benefits. With approval of the proposed amendment, the term would extend to 2030. Hoag intends to fully exercise the development allowances under the agreement and requires one additional year to account for COVID-19 complications and delays to planning and development.

In response to Commissioner Klaustermeier's question, Assistant Planner Achis advised that the terms relative to the public benefits will not be affected by the proposed amendment.

Commissioners Rosene and Klaustermeier and Vice Chair Lowrey disclosed no ex parte communications. Secretary Kleiman and Commissioner Koetting and Chair Weigand disclosed communications with the applicant's consultant.

Chair Weigand opened the public hearing.

Sanford Smith, Hoag Hospital Senior Vice President for Real Estate and Facilities, indicated the majority of planning work has been delayed in order to address the current COVID-19 crises.

In reply to Chair Weigand's inquiry, Mr. Smith related that elective procedures have been postponed and patients have avoided hospital services in response to the stay-at-home order. The hospital has focused on crisis response. Planning for the hospital campus has not been and will not be a focus for at least a year.

Jim Mosher, a member of the public, commented that if the applicant's consultant is a lobbyist and has not registered with the City, he should do so. Mr. Mosher questioned whether the public benefit provided in the Development Agreement should be amended to allow some flexibility in its use.

Chair Weigand did not believe renegotiation of Development Agreement terms is within the Planning Commission's purview.

Chair Weigand closed the public hearing.

Motion made by Commissioner Rosene and seconded by Commissioner Klaustermeier to approve the staff recommendation.

Substitute Motion made by Commissioner Koetting and seconded by Vice Chair Lowrey to approve a two-year extension of the Development Agreement Term.

Chair Weigand shared his opinion of the Development Agreement in light of the services Hoag Hospital provides to the City and the community.

The **Substitute Motion** was approved by the following vote:

AYES: Weigand, Lowrey, Kleiman, Klaustermeier, Koetting, Rosene

NOES:

RECUSED: Ellmore

ABSENT:

ITEM NO. 4 AT&T SMALL CELL SLC0796 APPEAL (PA2019-111)

Site Location: Public right-of-way, City Streetlight Number SLC0796, at the northwestern corner of Balboa Boulevard and 30th Street

Summary:

An appeal of the Zoning Administrator's decision on April 16, 2020, to approve a minor use permit allowing the installation of a small cell wireless facility on a City-owned streetlight pole. Project implementation will be fully contained within the public right-of-way on Balboa Boulevard and includes the following: (1) Removal and replacement of an existing City streetlight; (2) Installation of a small cell wireless facility that consists of four remote radio units, a raycap disconnect, and an omni-directional antenna within a 12-inch diameter antenna screening shroud. This equipment would be fixed to the top of the replaced streetlight pole for a maximum height of 34 feet, 9 inches. Support equipment will be in an adjacent below-grade

vault. Also included is the review of a coastal development permit pursuant to Newport Beach Municipal Code (NBMC) Section 21.49.020(B).

Recommended Action:

1. Conduct a public hearing;
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the State CEQA (California Environmental Quality Act) Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment and the exceptions to the Class 3 exemption under Section 15300.2 do not apply; and
3. Adopt Resolution No. PC2020-018 approving Coastal Development Permit No. CD2020-052 and affirming the decision of the Zoning Administrator approving Minor Use Permit No. UP2019-030 with the attached Findings and Conditions.

Senior Planner Ben Zdeba reported small cell is new technology that is being deployed globally. The City's review is largely limited by federal law to primarily aesthetics, land use, and environmental impacts. The Planning Commission cannot consider safety and health hazards due to radio frequency emissions when making its decision. The City Council authorized a Master License Agreement (MLA) for use of City-owned streetlights, including the proposed streetlight. On April 16, 2020, the Zoning Administrator approved applications for this facility and a second facility. Mark Pollock filed an appeal on April 28, 2020, and cited underlying issues with the MLA. On June 4, the Planning Commission continued a hearing of this item to allow further analysis of the need for a coastal development permit. Applications for two additional facilities will return to the Zoning Administrator for coastal development permits.

Senior Planner Zdeba continued that the Zoning Administrator referred the application for a coastal development permit for facility SLC0796 to the Planning Commission for hearing with the appeal as a single project. The proposed location is adjacent to an unusually large parkway area adjacent to a residential district. The entire neighborhood is zoned residentially except for one parcel zoned visitor serving commercial where a laundromat is located. The location on the wider thoroughfare of Balboa Boulevard will limit obstructions to the transmission of signals. The existing streetlight will be replaced with a similar streetlight, but the height of the streetlight pole will increase from 30 feet 2 inches to 34 feet 9 inches. Antennas will be enclosed in a screening shroud atop the streetlight, and all support equipment will be vaulted below grade. The height of the proposed luminaire or light source will remain the same as the existing luminaire and other luminaires along City streets. The applicant considered five alternative sites and determined they are infeasible or inferior to the proposed site. Based on the applicant's coverage maps, the proposed facility will improve coverage. Staff found that the facility will not impede access, impact public view or coastal resources; is consistent with the Zoning Code and General Plan; is visually compatible; and complies with Title 20 and Title 21 standards. Staff has prepared several conditions of approval that address conformance with the submitted design and plans and compliance with State and Federal laws.

In answer to Commissioner Rosene's queries, Senior Planner Zdeba was unsure if the City maintains the landscape area or if the City has a maintenance agreement with the adjacent property owner. Assistant City Attorney Yolanda Summerhill advised that the MLA pertains to real property management rather than land use. Staff has confirmed that insurance requirements contained in the MLA have been met.

In response to Chair Weigand's inquiries, Senior Planner Zdeba indicated discussion of a potential refund of the appeal fee could occur outside the meeting. The Planning Commission may include a recommendation for a refund in its decision. The new fire station is likely outside the coverage area of the proposed facility.

Chair Weigand explained that regardless of the appeal, the application would have returned to the Zoning Administrator for a coastal development permit. Perhaps Commissioners will consider waiving the appeal fee.

In reply to Secretary Kleiman's question, Assistant City Attorney Summerhill explained that the Commission may make the appropriate findings to uphold the Zoning Administrator's decision and should take public testimony.

Secretary Kleiman expressed concern about the Planning Commission's ability to consider the issues raised in the appeal.

All Commissioners disclosed no ex parte communications.

The Planning Commission recessed to allow staff to address technical issues with the audio and visual system.

After the technical issues were resolved, Chair Weigand opened the public hearing.

Cory Autrey, applicant's representative, shared statistics regarding use of cell phones and wireless services and data usage. Network density must be upgraded to keep pace with surging demands for data. Small cells cover a radius up to 250 to 1,000 feet; provide increased data density and faster connectivity speeds; and comply with strict standards for radio frequency (RF) exposure.

Franklin Orozco, applicant's consultant, stated the small cell facility will increase network capacity to better handle traffic generated by residents and visitors. The palm trees adjacent to the proposed site will soften the appearance of the facility. The applicant found placing a facility in alternative sites is not feasible because utility poles at some sites are subject to future undergrounding; shrouding (screening) a facility on a utility pole is difficult; and the limited sidewalk space around streetlights at alternative sites will not comply with Americans with Disabilities Act (ADA) requirements.

In reply to Vice Chair Lowrey's inquiry, Mr. Orozco indicated the small cell facility supports 4G LTE technology, and 5G technology will require modification of the shroud.

Mark Pollock, appellant's representative, explained that the appeal is based on issues regarding liability, insurance coverage, and indemnity such that the City could be held responsible in the event of a catastrophe. Municipal Code Section 20.49.080 requires a telecom company to obtain an MLA and a minor use permit. The City's MLA is with New Cingular Wireless PCS, LLC. The MLA does not mention AT&T. The certificate of insurance checklist submitted for the project lists the insured as AT&T. AT&T is not an entity. The manager of New Cingular Wireless is AT&T Mobility Corporation, which is not registered to do business in the state of California. AT&T Mobility Corporation has no legal right to request a permit. If AT&T wishes to apply for a permit, it should enter into an MLA under its corporate name. Twelve corporations and 18 LLCs using the name AT&T and one corporation and eight LLCs using the name AT&T Mobility are registered with the State of California. AT&T should identify which entity is applying for a permit and which entity has signed an MLA. Condition of Approval No. 34 requires the applicant to indemnify the City. If the applicant is a nonexistent dba, the indemnity is worthless. New Cingular Wireless should provide proof of general liability insurance that lists the City of Newport Beach as an additional insured. The City cannot consider electromagnetic field (EMF) emissions in approving the application, but it can consider EMF emissions when requiring insurance.

In response to Commissioner Koetting's questions, Mr. Pollock indicated the appellant wishes to remain anonymous as allowed by the Municipal Code. He reported he has no pending appeals based on this issue in any other cities. He has expressed this issue in a letter to the Public Works Director in the City of Napa in a separate matter.

Mr. Autrey advised that AT&T has provided all necessary documentation that shows the relationship between AT&T Mobility and New Cingular Wireless and AT&T Incorporated as the parent company. The signing authority for the MLA outlined the relationship between New Cingular and AT&T. AT&T's insurance coverage does not contain an exclusion for EMF exposures. New Cingular self-insures pollution liability exposures and has provided a certificate of self-insurance.

Assistant City Attorney Summerhill related that New Cingular is an entity with AT&T and would be subject to the MLA.

In answer to Secretary Kleiman's queries, Mr. Pollock stated the appellant resides in the City of Newport Beach and in the neighborhood where the facility is proposed. He was not aware of any plans or intentions the appellant may have to appeal any other decisions on this applicant's projects.

In response to Chair Weigand's inquiries, Senior Planner Zdeba reported Verizon's small cell installations provide a public benefit of coverage for the City's public safety departments, and that exempts Verizon from minor use

permit and coastal development permit requirements. Assistant City Attorney Summerhill stated the City's indemnifications are typically identical for all agreements. Community Development Director Seimone Jurjjs advised that he was involved in the negotiations with AT&T regarding the MLA. Because MLAs are more of a template, he believed the City's MLAs with AT&T and Verizon are substantially the same with some nuanced differences. The indemnification and liability provisions of the two MLAs are substantially the same. The City Council did not focus on liability when discussing the MLAs. The Council is not considering amendments to the MLAs unless one of the carriers proposes an amendment. The Planning Commission's decision may be appealed to the City Council or the California Coastal Commission.

Jim Mosher noted a Planning Commission denial of a coastal development permit cannot be appealed to the Coastal Commission. He inquired whether the applicant considered the rooftops of commercial buildings in the Pavilion Shopping Center as alternative sites.

Mr. Autrey explained that the ideal location for small cell facilities is the public right-of-way because the consistent height of streetlights and utility poles provides service to the most people. Private property options do not fulfill technical requirements for small cell facilities.

In reply to Chair Weigand's question, Mr. Autrey indicated a macro cell is a larger facility that propagates service over a larger area. Most dense residential areas do not have sites that can be zoned for macro cells. Small cell technology will benefit residential areas by providing the needed capacity and net density.

Chair Weigand closed the public hearing.

Secretary Kleiman believed the appeal fee is nominal compared to the time and resources staff has devoted to the appeal. The appellant's purpose for filing the appeal has been fulfilled in that the City is aware of the appellant's concerns. The City Attorney's Office will ensure the City is fully protected.

Commissioner Klaustermeier remarked that large corporations operate under different entities. In answer to her query, Assistant City Attorney Summerhill indicated the Real Property Department will ensure compliance with the terms of the MLA.

Motion made by Secretary Kleiman and seconded by Commissioner Klaustermeier to (1) find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the State CEQA (California Environmental Quality Act) Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3; and (2) adopt Resolution No. PC2020-018 approving Coastal Development Permit No. CD2020-052 and affirming the decision of the Zoning Administrator approving Minor Use Permit No. UP2019-030 with the proposed Findings and Conditions.

AYES: Weigand, Lowrey, Kleiman, Ellmore, Klaustermeier, Koetting, and Rosene

NOES:

ABSTAIN:

ABSENT:

ITEM NO. 5. SHELL SERVICE STATION CAR WASH ADDITION (PA2016-093)
Site Location: 1600 Jamboree Road

Summary:

A general plan amendment and conditional use permit to construct an automated car wash in conjunction with an existing service station. A general plan amendment is requested to increase the maximum floor area limit for the site by 1,100 square feet to accommodate the proposed car wash. A conditional use permit is requested to allow the addition of the proposed car wash. This item was continued from the November 8, 2018, Planning Commission hearing. If approved, this Conditional Use Permit would supersede Use Permit No. UP2011-028.

Recommended Action:

1. Conduct a public hearing;

2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment; and
3. Adopt Resolution No. PC2020-022 recommending City Council approval of General Plan Amendment No. GP2018-001 and Conditional Use Permit No. UP2016-025.

Assistant Planner Melinda Whelan reported the site is located at the corner of Jamboree Road and San Joaquin Hills Road and within the Big Canyon Planned Community. The site was designed for a service station and has been operated at the site since 1970. In 2014, the use permit was amended to allow expansion of the convenience store and to add an Alcoholic Beverage Control (ABC) license. The applicant proposes an addition for a car wash. A General Plan amendment is needed to increase the maximum allowed floor area for the site to accommodate the structure. The applicant seeks relief from the 30-foot front yard setback requirement. The area adjacent to the right-turn lane acts more as a rear yard than a front yard, and the right-turn lane does not provide access to the site. Guidelines within the Municipal Code recommend car wash services be located toward the rear of sites to accommodate proper queuing and circulation. In September 2018, the Planning Commission considered this application and continued the item so that the applicant could conduct additional public outreach and improve the design to mitigate potential noise impacts to nearby residential neighborhoods.

Assistant Planner Whelan further reported the applicant has reduced the proposed hours of operation and added two wing walls for sound attenuation. The applicant proposes 13 onsite parking spaces; required parking for the site is seven spaces. The triangular shape of the site prevents relocation of the car wash without affecting the existing onsite circulation and access to gas pumps. The wing walls will act as noise barriers to the adjacent residences and the plan provides landscape areas facing the right-turn lane. The residences nearest the site are located 115 feet and 120 feet away from the proposed car wash. An updated noise study found the projected noise levels generated by a car wash without wing walls would be below the maximum allowed daytime limit at the most sensitive locations. The addition of wing walls would further reduce projected noise levels. Proposed conditions of approval will require the project to meet the design requirements of the noise study, including the exterior vacuum location and reduced hours of operation.

All Commissioners disclosed ex parte communications with the applicant's consultant; Chair Weigand disclosed communications with nearby residents; and Commissioner Koetting disclosed communications with a nearby resident.

In response to Commissioner Koetting's inquiries, Assistant Planner Whelan advised that staff considered relocating the car wash closer to the convenience store, but it would negatively affect circulation and access to gas pumps. The wing walls will be constructed in compliance with sound attenuation requirements. They will be masonry walls. Staff considered the triangular shape of the lot, the site being surrounded by streets, guidelines recommending the location of car wash services at the rear of parcels, the intent to apply the 30-foot setback to street frontages that provide access to the site, and lack of access to the site from the turn lane as factors in support of granting a reduction in the setback. The existing trees should be maintained on the site, and the applicant proposes additional landscaping along the perimeter of the site.

In reply to Commissioner Ellmore's queries, Assistant Planner Whelan indicated the City Traffic Engineer's standard requirement for car wash queues is five vehicles. City Traffic Engineer Tony Brine explained that a sixth car would extend beyond the queuing lane and block the end parking stall. A total of eight vehicles could queue for the car wash without impacting traffic on Jamboree Road. Signage directing queuing has not been proposed.

Chair Weigand opened the public hearing.

Steve Rosansky, applicant's representative, shared photos of the site. The plans now include 10-foot wall extensions to mitigate noise, additional plantings behind the car wash, and relocation of the trash enclosure. The entrance and exit doors for the car wash will be made of plexiglass and canvas. The car wash queue will accommodate five vehicles. Seven parking spaces will be located along the right-turn lane, and six spaces will be located in front of the convenience store. Vacuums and air and water service have been relocated to the area in front of the convenience store to reduce noise for residents. The applicant originally proposed hours of operation of 6:00 a.m. to 11:00 p.m. and has modified the hours to 7:00 a.m. to 10:00 p.m. He shared a video of a similar car wash in operation with closing doors to demonstrate noise generated by the car wash. The maximum allowed

daytime noise level is 55 Decibels (dBA), and noise levels projected for all receptor sites were less than 40 dBA. Projected noise levels for the vacuums were approximately 30 dBA. The applicant offered the homeowners' association funding for additional landscaping along the berm, but the homeowners' association declined the offer. He described the design differences between the car washes at the Chevron service station and the Shell station and his outreach efforts with the homeowners' association, Park Newport, and residents. The existing trees and planter at the rear of the property will remain. The trees will be protected during construction. Relocating the car wash closer to the convenience store will result in relocation of the delivery entrance to the convenience store, obstructions to gas pump access, and changes in circulation. Signage directing vehicles to queuing areas for the car wash can be installed. The applicant agrees to the proposed conditions of approval.

In answer to Commissioner Koetting's inquiries, Mr. Rosansky indicated relocation of the hydrogen station has not been considered but would be a huge expense. A car wash takes approximately 5 minutes to complete. The similar car wash shown in the video is located in Irvine. A condition of approval can be added to require functioning doors on the car wash. Ahmad Ghaderi, project engineer, reported the car wash will be constructed of blocks with a sheet-metal cover. The wing walls will be constructed of blocks. The length and height of the walls meet the acoustical requirements of the noise analysis.

Marilyn Brewer, Canyon Mesa, advised that the gas station and convenience store have created loud and unanticipated noises. Noise travels differently from the site and impacts the neighborhood to a greater degree. The car wash cannot be relocated because the site is fully utilized.

Michael Klaus, Big Canyon HOA, opposed the applicant's request for a variance from the setback. Building a car wash between the service station and residences will cause sound levels to exceed 55 dBA. The project will negatively impact residents' quality of life and real estate values.

Paul Geary, Canyon Mesa, expressed concerns about the lack of a demonstrated need for a car wash and the financial impact of the project on residences. Two car washes are already located within a half mile of the site. He urged the Planning Commission to deny the application.

Helga Meyer, 33 Rue Fontainebleau, opposed the project because the car wash will add to existing traffic noise, traffic in the queue will generate pollution, the project will reduce real estate values and residents' ability to enjoy their homes.

Chrissy Cruze, 3 Rue Fontainebleau, shared issues caused by the development of a nearby apartment complex and increased noise generated by the expansion of the convenience store.

Gerald Giannini, Rue Fontainebleau, believed the proposed car wash does not adequately mitigate sound and requested the Planning Commission deny the application. The car wash shown in the video does not operate as depicted. His sound measurements at the car wash were considerably higher than projected in the noise study.

Leonard Simon, 37 Rue Fontainebleau, opposed the project. The metal sheathing would amplify noise. The project will increase traffic, noise, and pollution. Canyon Mesa should be considered an environmentally sensitive area such that the CEQA exemption is not allowed. The hydrogen facility is a safety issue.

Mark Coleman, 34 Rue Fontainebleau, discussed the lack of need for an additional car wash. The automated car wash will not create jobs. The project will damage the value of properties in Canyon Mesa. Reducing the setback indicates the property is already over-built.

Gerald Giannini read a letter from David Kuhn, 30 Rue Fontainebleau, who adamantly opposed the project because a service station is incompatible and not harmonious with a residential development and approving additional development on the site does not consider the cumulative effects of prior modifications to the site.

James Sanders, 4 Rue Fontainebleau, related his difficulty selling his home even after price reductions. Residents do not want the extra noise and traffic that is generated by the service station.

Lynn Swain, 7 Rue Marseille, strongly opposed the project and noted properties in Canyon Mesa have not sold after years on the market and significant price reductions. Realtors have opined regarding the detrimental impacts of noise and traffic on real property sales.

An unidentified speaker read a letter from Lynda Bentall, 38 Rue Fontainebleau, who opposed the project because it will increase noise, light, and traffic.

An unidentified speaker read a letter from Chris Alevizos, 32 Rue Fontainebleau, who believed granting the reduced setback would decrease the value of his real property and increase noise.

Skip Wilson, 9 Rue Fontainebleau, listed the properties for sale in the neighborhood, the number of days on the market for each, and price reductions for each and attributed the lack of sales to the noise generated from the Shell station.

Carl Swain, 7 Rue Marseille, emphasized previous comments regarding the need for a car wash; adverse effects on property values; increased noise, glare, and light intrusion; differences between the car wash depicted in the video and in reality; and detrimental and cumulative effects of noise on homeowners.

Mr. Rosansky advised that no noise complaints have been filed against the Shell station. The Newport Center car wash has been proposed for redevelopment. Based on his internet research, a total of six car washes are located in Newport Beach. The Shell station, built in 1970, has modified its business model to stay current with the times. A service station's profit is derived from additional services, not the sale of gasoline. The applicant leases the property for a substantial rent amount. Modification of a use permit is common. The Municipal Code does not require a business owner to live in Newport Beach. The video of the car wash is intended to demonstrate use of the doors and the noise level. Conditions of approval for the Chevron car wash do not require entry and exit doors. The sound study shows that sound generated by the car wash will be insignificant compared to the existing ambient noise.

Mr. Ghaderi reiterated that the construction will be block walls and ceiling with a sheet-metal cladding that matches the convenience store.

Mike Holritz, acoustical engineer, reported noise is cumulative. Adding 40 dB to an existing 60 dB noise level results in a noise level of 60.4 dB. CEQA's level of significance for noise is an increase of 3 dB. If noise levels increase 3 dB, noise must be mitigated. Adding noise from the car wash to the existing ambient noise increased noise levels by less than 1 dB.

Deputy Community Development Director Jim Campbell clarified that the City's CEQA significance criteria for noise is exceeding the Noise Ordinance. Typically, a noise increase of less than 3 dBA is not perceptible to persons of normal sensitivity. The information suggests the car wash will not exceed the Noise Ordinance and, therefore, the noise attributable to the project would not have a significant effect.

Chair Weigand closed the public hearing.

Commissioner Rosene remarked that the doors on the Quail Hill car wash are not operational. The Quail Hill car wash generates significantly less noise than the Chevron car wash. The street noise on Rue Fontainebleau today is loud. The applicant is willing to close the car wash if the doors are not operational. Perhaps the applicant would be willing to change the hours of operation. Locating the vacuums and air and water service in front of a dedicated parking space seems odd, and they should be relocated elsewhere or removed from the site. He expressed interest in possibly adding the wall along the setback line.

Chair Weigand reopened the public hearing.

In reply to Commissioner Ellmore's queries, Mr. Rosansky reported the applicant owns approximately 50 service stations, nine of which have car washes. Fred Kim, business owner, advised that he has acquired the car washes rather than constructing them. The car washes are busiest during the morning and evening commute times. The number of cars using the car wash after sunset decreases drastically. At this location, business is slow on Saturday and even slower on Sunday.

Commissioner Koetting noted changes between the 2018 and 2020 projects are two 10-foot screening walls, hours of operation, and funding for additional vegetation on the slope. In driving around the City, he found 12 car washes. He questioned staff's rationale for proposing Condition of Approval No. 29 requiring the use of recycled water only if it is economically feasible. He agreed that the proposed location for vacuums and air and water service is odd. He expressed his position that the car wash is inappropriate, in the wrong location, and unnecessary.

Chair Weigand indicated there should be a condition of approval requiring the applicant to maintain the car wash doors. In response to his questions, Deputy Community Development Director Campbell reported the service station regulations provide different setbacks for different features. A car wash must be set back 30 feet from a public street. Staff administratively approved the installation of the hydrogen station at the site previously. Chair Weigand remarked that the hydrogen station could generate more noise than the car wash.

Mr. Holritz clarified that each wall is 16 feet high and 10 feet long. The length of the walls can be extended, which will provide some additional noise reduction. The scenario considering noise bouncing off the walls back to the residences was not analyzed because noise levels were already below the City's noise standards. Noise will bounce off a flat wall, but that type of reflection will not significantly increase the noise level. To minimize the echo, the wall will be constructed with split-based block and covered with landscaping.

Chair Weigand closed the public hearing.

Commissioner Klaustermeier commented that the concern is noise, and no evidence in the acoustical report indicates the car wash will add significant noise or increase the ambient noise level. The ambient noise is caused by vehicular and aircraft traffic. The applicant has addressed some concerns and has agreed to some mitigation design features.

Commissioner Koetting stated the request for a 15-foot reduction in the 30-foot setback leads him to believe the site is not appropriate for the use. Too many facilities are being crammed onto the site. He could not make the findings to approve the project.

Motion made by Commissioner Koetting to deny the application. The motion failed for lack of a second.

At Commissioner Klaustermeier's request, Deputy Community Development Director Campbell explained that the service station regulations require a 30-foot setback to public streets for car washes. The applicant requests a 15-foot reduction of the setback. The Planning Commission may reduce the setback with the findings contained in the resolution and it is not a Variance application.

Commissioner Ellmore could support approval of the application with amendments to reduce the hours of operation to 7:00 a.m. to 8:00 p.m. and to require signage regarding queuing and closure of the car wash doors while a car is being washed.

Commissioner Rosene proposed removal of the vacuums.

Chair Weigand reopened the public hearing.

Mr. Rosansky, on behalf of the applicant, agreed to conditions of approval regarding signage and functioning doors for carwash operations. After discussion with the applicant, the applicant agreed to remove the vacuums and requested hours of operation of 7:00 a.m. to 8:30 p.m.

Chair Weigand closed the public hearing.

Motion made by Chair Weigand and seconded by Commissioner Ellmore to approve the staff recommendation with amendments to require signage for queuing, to require functioning doors for and during operation of the car wash, to remove the vacuums entirely, and to limit the hours of operation of the carwash to 7:00 a.m. to 8:30 p.m.

Commissioner Koetting reiterated residents' concerns about noise, environmental issues, property values, no job creation, and no tax revenues and his concern about the reduction of the setback.

The motion passed by the following vote:

AYES: Weigand, Lowrey, Kleiman, Ellmore, Klaustermeier, and Rosene
NOES: Koetting
ABSTAIN:
ABSENT:

IX. STAFF AND COMMISSIONER ITEMS

ITEM NO. 6 MOTION FOR RECONSIDERATION

None

ITEM NO. 7 REPORT BY THE COMMUNITY DEVELOPMENT DIRECTOR OR REQUEST FOR MATTERS WHICH A PLANNING COMMISSION MEMBER WOULD LIKE PLACED ON A FUTURE AGENDA.

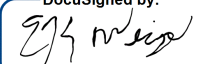
Deputy Community Development Director Campbell reported the second meeting of the Housing Element Update Advisory Committee (HEUAC) is scheduled for July 15, 2020, at 6:00 p.m. in the Council Chambers. The Planning Commission's agenda for the July 23, 2020, meeting contains three items.


ITEM NO. 8 REQUESTS FOR EXCUSED ABSENCES

None

X. ADJOURNMENT – 10:45 p.m.

The agenda for the July 9, 2020, Planning Commission meeting was posted on Thursday, July 02, 2020, at 12:15 p.m. in the Chambers binder, on the digital display board located inside the vestibule of the Council Chambers at 100 Civic Center Drive, and on the City's website on Thursday, July 02, 2020, at 11:30 a.m.

DocuSigned by:

Erik Weigand, Chairman

DocuSigned by:

Lauren Kleiman, Secretary